(6)

FILED
FEB 3 1995
OFFICE OF THE CLERK

NO. 94-1015

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

DANIEL G. GELLERT,
Petitioner

v.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX TO RESPONSE BRIEF

In pro se by:
Daniel G. Gellert
P. O. Box 320370
Cocoa Beach, FL 32932
(407) 783-9412

Topp

TABLE OF CONTENTS

APPENDIX 1
Miami Herald Newspaper September, 1994 Article
APPENDIX 2
Petitioner's Motion for Protective Order
APPENDIX 3
U.S. Bankruptcy Court Decision
APPENDIX 4
Magistrate Report & Reommendation
APPENDIX 5
Order of Dismissal
APPENDIX 6
Motion to Strike Plaintiff's Motion for Summary Judgement
APPENDIX 7
Letter of Agreement, Document 102
APPENDIX 8
Assignment and Authorization for Voluntary Check Off of Association Dues 12-1-71
APPENDIX 9
Assignment and Authorization for Voluntary Check Off of Association Dues or Contract Maintenance Fees 6-1-85
APPENDIX 10
Assignment and Authorization for Voluntary Check Off of Association Dues or Contract Maintenance Fees 9-17-85
APPENDIX 11
ALPA Letter dated 1-21-86
APPENDIX 12
Letter to ALPA dated 1-23-86
APPENDIX 13
ALPA Letter dated 4-14-86
APPENDIX 14
ALPA Letter dated 5-21-86
APPENDIX 15
ALPA Letter dated 7-23-86
APPENDIX 16
Letter to ALPA dated 10-17-86
APPENDIX 17
ALPA Letter dated 4-6-89
APPENDIX 18
PBGC Memorandum dated 3-25-91
APPENDIX 19
PBGC Letter dated 5-7-92
APPENDIX 20
Criminal Judgement Entered Against Eastern Airlines, Inc.

Retrials are granted in 14 criminal cases

The judge was under investigation

By DAVID LYONS
Herald Staff Writer

In a decision that could cost taxpayers millions, a federal judge has ordered 14 Miami criminal cases retried, including a high-profile bank fraud prosecution, because a South Florida judge did not recuse himself while he was under government scrutiny.

The most notable of the cases includes the fraud convictions of former Republic National Bank President Fred de la Mata and fellow executives Manuel A. Calas and Oscar Castilla, and businessman Enrique Fernandez. That trial, a complicated bank fraud case, lasted 2 ½ months.

Another lengthy case involved Israel Abel, a U.S. citizen convicted of drug trafficking after he was apprehended in Costa Rica, which later protested his extradition.

The judicial controversy centers on U.S. District Judge K. Michael Moore, a Coral Gables resident who was appointed to the bench after a stint as director of the U.S. Marshals Service.

Between 1992 and early this year, prosecutors in Brooklyn, N.Y., investigated whether Moore accepted improper gratuities while he headed the Marshals Service. Ultimately, the government dropped its investigation and determined that no criminal charges should be brought.

But after hearing about the probe, defense lawyers in 14 cases he oversaw argued that the judge should have told them about his situation before their trials started and offered to recuse himself.

Their reason: The judge might have favored the government's lawyers during court proceedings in the hopes of getting a break in his own case.

After reviewing the matter for several months, U.S. District Judge William C. O'Kelley of Atlanta agreed with the defense lawyers. He granted new trials for their clients.

"Quite simply, and quite universally, recusal is required whenever impartiality might reasonably be questioned," O'Kelley wrote in an order released Monday but dated Sept. 9.

Moore was unavailable for comment, a secretary said.

U.S. Attorney Kendall Coffey, whose office faces the possibility of spending millions to retry the cases, as well as the task of recalling countless witnesses, said Monday that his staff is reviewing its options.

"It could range from seeking reconsideration from Judge O'Kelley, to seeking appellate review," Coffey said. No new trial dates had been set.

Appendix 2

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 93-4928

IN RE:

DANIEL G. GELLERT,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

PETITIONER'S MOTION FOR PROTECTIVE ORDER

Petitioner, in pro se, moves this Court for a protective Order from the time of receipt of this Motion, until July 5, 1994. Petitioner will be out of this jurisdiction during that period, as a result of the unsolved murder of Petitioner's daughter on March 20, 1994, the need for security considerations of Petitioner's immediate family requires this absence to undisclosed location.

Petitioner has a Suggested Inbanc Rehearing pending before this Court, and Petitioner prays for protective relief until July 5, 1994, as to any time for response to any order under the federal or local rules in this instant cause, as Petitioner would file for Certiorari with the Supreme Court in the 90 day period.

Respectfully submitted,

\s\

DANIEL G. GELLERT in pro se
P.O. 320370 Cocoa Beach, Fl. 32932
(407) 783-9412

Appendix 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by mail this 5 day of May, 1994, to:

Robert T. Kofman & Gary Green
2200 Museum Tower
150 West Flagler St.
Miami, Fl. 33130

Mark Hicks
Suite 2402 New World Tower
100 North Biscayne Blvd.
Miami, Fl. 33132

Maurice J. Baumgarten
Suite 3300 International Place
100 Southeast Second St.
Miami, Fl. 33131

Mark Blank
Pension Benefit Guaranty Corp.
K Street, N.W.
Washington, D.C.

K. Michael Moore
U.S. District Court
301 N. Miami Ave.
Miami, Fl. 33128

\s\
DANIEL G. GELLERT
P.O. 320370
Cocoa Beach, Fl. 32932
(407) 783-9412

Appendix 3

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter
of
IONOSPHERE/EASTERN AIR LINES, INC.
Debtors

Case No. 89 B 10448

November 15, 1994

United States Custom House
One Bowling Green
New York, New York 10004

Hearing on Trustee's 3rd omnibus objections to employee claims (individual employees claims and non-employee prepetition litigation claims).

B E F O R E:

HON. BURTON R. LIFLAND,

Bankruptcy Judge

Appendix 3

IONOSPHERE/EASTERN AIR LINES, INC.

APPEARANCES:

VERNER, LIIPFERT, BERNHARD, McPHERSON AND HAND, CHARTERED

Special Counsel to Trustee

600 Travis

2600 Texas Commerce Tower

Houston, Texas

BY: JOHN P. CAMPBELL, ESQ., of Counsel

and

BY: ANNE M. FERAZZAI, ESQ., of Counsel

IONOSPHERE/EASTERN AIR LINES, INC.

Appendix 3

PROCEEDINGS

MR. CAMPBELL: We will now turn to the matter of Mr. Gellert. Mr. Gellert is here and invite him to come forward at this time.

MR. GELLERT: I was called from Houston and I was told I would receive some documents by Fed Ex last Friday, which I did not receive. I left for work on Saturday but the gentleman just showed me a document. I didn't have time to study it. But I would like to put into evidence the exhibit, Summary Judgement motion and the response from Eastern and two other Court documents.

MR. CAMPBELL: May I suggest for the record, since we are the objecting party, we outline where we are going and then it will be his turn to put those in.

THE COURT: Yes, you are making the motion. Go ahead.

MR. CAMPBELL: I will begin.

What we have in the matter of Mr. Gellert is actually two lawsuits that are on file elsewhere. We have a lawsuit

on page 35 of the objection. It's described as being in the Southern District of Florida, and it's case number 881114.

This was case that is basically a challenge to Mr. Gellert's discharge, which occurred in the mid-80's. Mr. Gellert was a pilot. He was terminated. He filed a grievance pursuant to the ALPA contract. It went to a proceeding before the Pilot System Board of Adjustment, and Mr. Gellert did not prevail.

He filed this suit in the Southern District of Florida claiming that Eastern violated the Railway Labor Act when it allegedly refused to withhold dues money and pay it over to ALPA which caused his termination because the contract required him to pay dues.

The District Court in Florida dismissed that case and it was appealed to the 11th Circuit where the stay is in effect and the matter is stayed up there.

Throughout this rather exhaustive litigation Mr. Gellert has now shown that this particular lawsuit has any merit. The law is quite clear that the discharge of an employee, such as a pilot covered by the Railway Labor Act

under a union contract is a minor dispute and that the federal District Court lacked jurisdiction to review discharges that are in fact minor disputes.

The choice made by Congress years and years, decades and decades ago in the case where carriers, railroads, and airlines, these carriers and their unions would be required to have the equivalent of System Boards, have a mandatory arbitration procedure, and the complaints were to be washed through that system, and that was the final and binding resolution of minor disputes.

And so minor disputes, as this classically is, are not subject to review in the Federal District Court, and for that reason we say that the lawsuit in Florida, the first lawsuit we mentioned, has no merit, and therefore the claim should be disallowed and the lawsuit's value should be submitted at zero.

With respect to another lawsuit, this one was couched a bit differently. It is a lawsuit which in essence is a challenge to its termination, again in a different guise. This is the lawsuit that the response filed to this instant

proceeding says that there is a $12 million default judgement against Eastern, but there is in fact no such default. And on that point I would proffer the testimony of Maurice Baumgarten, who is here today, a former Eastern in-house lawyer, who is now in private practice. But one of his charges is to continue representing the estate in the Gellert litigation, and he would testify there is in fact no default as to these Debtors, $12 million or any other amount.

This lawsuit is Florida, the second lawsuit, page 13 of the reply and page 36 of the original objection, is merely another challenge to the termination that occurred in 1986. The same law applies; that is, that the discharge was a minor dispute, went to a System Board of Adjustment. He had his bite at the apple. That was his exclusive remedy. And that's that.

So there is no merit to that lawsuit, and so the value of that lawsuit should be estimated at zero. To the extent the proof of Claim is on file for the lawsuit, why, it should be disallowed.

MR. GELLERT: Unfortunately, the gentleman really

misrepresents the facts.

THE COURT: Before we go further, there is an offer of testimony. The witness is available. Do you want to examine the witness?

MR. GELLERT: I would like to respond to his statement first.

THE COURT: I am just asking.

MR. GELLERT: Yes. Definitely.

THE COURT: Put the witness on the stand.

MR. GELLERT: He made an opening remark. Could I respond?

THE COURT: He didn't make an opening remark. He proffered testimony through a witness, and I am giving you the opportunity to examine the witness.

MR. GELLERT: I would like to respond for just thirty seconds, if I may.

THE COURT: Go ahead.

MR. GELLERT: I just wanted to respond to the fact that he brought in that the Railway Labor Act is an exclusive remedy here. When the Supreme Court in IAM versus - -

A I don't know how many men were on the board. I think there were maybe two company representatives and two union representatives and a neutral named Lawrence Ciebel.

Q I show you this. Do you recognize this?

A Yes, this looks like one of your myriad motions for Summary Judgement which you filed in the second Florida case.

Q Please - -

A Let me answer.

MR. GELLERT: it is not myriad motions. I don't like to be put down.

THE COURT: I realize you are pro se. That was not putting anybody down. The word "myriad" is a very simple one, it's one of many is what the statement is.

MR. GELLERT: This is the first Summary Judgement motion filed against Eastern Air Lines.

THE COURT: Mr. Gellert, you don't have to editorialize about everything. The witness made a very clear, concise statement, that it's one of many, that is what

the word "myriad' means.

Q Do you recognize this?

A Yes. This was the response that I filed on behalf of Eastern - -

Q Is it a memorandum of Law?

A Let me finish my answer.

This was the response that I filed, the response that I filed on behalf of Eastern, which consists of a motion to strike your Motion for Summary Judgement.

Q Is the motion to strike a proper motion against a Summary Judgement? Is that recognized by a court of law?

A Yes.

Q It is. On a Summary Judgement?

A Yes.

Q Is there a Memorandum of Law attached to this under Local Rule 71?

A I believe that this constitutes a Memorandum of Law under local rule of the Southern District of Florida.

Q Could you point out the Memorandum of Law,

please.

A Starts with paragraph 1 and ends with paragraph 9.

Q Did you receive a copy of this?

A I don't believe I saw this yet. I think it's the first time I am seeing this.

Q Are you acquainted with the Supreme Court case IAM versus Street?

A I heard of it, but I can't tell you what is in it.

MR. GELLERT: No more questions.

REDIRECT EXAMINATION BY MR. CAMPBELL:

Q Mr. Baumgarten, do you remember the record well enough to recall whether in 1986 or so an arbitration proceeding was held before a one-man or a multi-man board, whether it was under Section 102 or another section of the ALPA contract?

A I believe it was under a section of the ALPA contract, but I can't tell you what section it was.

MR. CAMPBELL: No further questions.

THE COURT: Thank you, sir.

MR. GELLERT: Can a proffer this as evidence now, sir?

THE COURT: Show it to Mr. Campbell.

MR. GELLERT: (Handing)

MR. CAMPBELL: I have no objection to the admission of these pleadings.

MR. GELLERT: Mark this as Plaintiff's Exhibit 1 in evidence.

THE COURT: It is received.

(The above described document was marked Plaintiff's Exhibit 1 in evidence, as of this date.)

MR. GELLERT: This as Exhibit 2 in evidence.

(The above described document was marked Plaintiff's Exhibit 2 in evidence, as of this date.)

MR. GELLERT: This is Exhibit 3 in evidence.

(The above described document was marked Plaintiff's Exhibit 3 in evidence, as of this date.)

MR. GELLERT: This is exhibit 4 in evidence.

(The above described document was marked Plaintiff's Exhibit 4 in evidence, as of this date.)

MR. CAMPBELL: At this point, Your Honor, we move with respect to the first named lawsuit, which has a Proof of Claim on file, to disallow the claim as having no merit.

With respect to the second lawsuit, I don't believe there is a Proof of Claim on file, but there is no showing that lawsuit has any merit but anything other than a discharge claim in another guise, therefore we ask with respect to the second lawsuit its value be estimated at zero.

MR. GELLERT: Your Honor, the U.S. District Court received two motions to dismiss from the Defendants, from the Debtors on that same legal argument, and they have been both denied. Summary Judgement is pending, and according to the local rules the Judge should decide them within the next ten days.

It is a viable case. It is protected by the Constitution's 1st, 5th and 14th Amendments as to the

forced collection of union dues, and all of these cases have been resolved by the Supreme Court in favor of Plaintiffs. The Court has recognized the constitutional provisions as to the collection of union dues.

MR. CAMPBELL: Again, Your Honor, there is simply no merit to the lawsuit, no merit shown, references to various Amendments to the Constitution notwithstanding, and therefore we rest on our motion.

THE COURT: With respect to motions for Summary Judgement, isn't there a preclusion in the Florida Court's Order prohibiting further motions for Summary Judgement without leave of the Court?

THE WITNESS: Yes, there are, Your Honor.

THE COURT: I don't see anything introduced here that shows that there has been some dispensation given with respect to this latest motion.

MR. GELLERT: Your Honor, the Court denied the Summary Judgement motion until discovery was to be completed. Discovery was completed around the 10th of May. So at six months down the road, the Summary

Judgement motion is now ripe. The document from the Clerk of the Court above shows that it falls under the ripeness rule. It's been pending for over ninety days and it should be resolved.

MR. CAMPBELL: May I ask Mr. Baumgarten to address that, with leave of the Court?

THE COURT: I haven't heard anybody answer my question. But, Mr. Baumgarten, since you are here and are familiar with this matter and have identified your familiarization with the exhibits, I will hear from you. You are still under oath.

THE WITNESS: First of all, there is still a pending motion to dismiss by Eastern in the case that was pending in the Southern District of Florida. There are no pending Summary Judgement motions by Mr. Gellert. Mr. Gellert's sole basis for seeking Summary Judgement is because he believes that Eastern and the other Defendants were in default for failing to file what he believes are the necessary responses to the motions for Summary Judgement which he filed.

In addition, to denying Mr. Gellert's Summary Judgement motions and in addition to prohibiting Mr. Gellert from filing any further Summary Judgement motions without prior leave of the Court, I believe attached to the Trustee's reply in this case in the District Court's Order, the Court denied Mr. Gellert's motion to have Eastern be held in default. And that was the status of the case.

THE COURT: Based on - -

MR. GELLERT: Could I respond to that?

THE COURT: Sure.

MR. GELLERT: The Judge has not ruled on the Summary Judgement motions and has not ruled on their response. Their response is in default of the procedure under Rule 56, Federal Rules of Civil Procedure and Local Rule 7.1 and 7.5.

The Judge ruled that Summary Judgement motion is denied until such a time as the discovery is complete and that leave of Court has to be obtained.

I did file after discovery was concluded for leave of Court, and that is what is part of the ripeness for filing

that came from the Clerk that under the local rules the Judge should either hold a hearing and decide the case in ten days or make a decision on those motions within ten days.

THE COURT: Based upon this record, there seems to be an initial set of facts which really form the underpinning for both lawsuits. The first lawsuit has been washed through and received the judicial determination, and that was on appeal, as I understand it; is that correct?

MR. CAMPBELL: That is correct.

THE COURT: But there was in connection with that lawsuit an opinion or finding by a Magistrate and then a confirmation and a de novo reviewed by the District Court, was it?

MR. GELLERT: That was true. That particular lawsuit did not challenge the discharge - -

THE COURT: I understand. But you have got two Proofs of Claim here, and I am dealing with the merits of those Proofs of Claim.

I do not find any merit to the underlying Proof of Claim with respect to the first lawsuit nor do I find that

your contention that you have a $12 million default judgement accurate, and I do not see that there is any underlying merit likewise to that lawsuit.

So under all of the circumstances here, if I were to estimate the claim based upon a lack of merit, I would be forced to estimate it at zero. I see little likelihood of the latest motion being successful.

Submit an Order.

MR. CAMPBELL: Thank you, Your Honor.

THE COURT: I ought to note for the record with respect to the Gellert claim, that, among other things, he asked for cert. to the Supreme Court, and I don't know whether that is from the denial of his request for an en banc hearing concerning a denial of a mandamus of the District Court. I take it the mandamus deals with the first lawsuit or does that deal likewise with both lawsuits or either one?

THE WITNESS: The mandamus deals with the second lawsuit and the District Court's Order denying his motions for Summary Judgement and not letting him file any other.

THE COURT: It seems like he had so many bites at the apple that he already consumed it.

THE WITNESS: He will still be biting, Your Honor.

Appendix 3

CERTIFICATE

I, ROBERT PAYENSON, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That I reported the proceedings hereinbefore set forth, and that the foregoing is a true record of the proceedings herein.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

/s/_____

Appendix 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-1114-Civ-SPELLMAN

DANIEL G. GELLERT,
Plaintiff,
v. REPORT AND RECOMMENDATION

EASTERN AIRLINES, INC.,
et. al.,
Defendants

_____/

Presently before the Court for consideration is defendant's Motion to dismiss (DE 11) Plaintiff's First Amended Complaint (DE 8). The Honorable Eugene P. Spellman, United States District Judge, referred this matter for all permissible judicial proceedings as provided by the Magistrate's Act and Magistrate Rules for this District.

Plaintiff seeks redress from defendant Eastern Airlines (EAL) for purportedly violating 45 U.S.C. Par. 152 Eleventh (b) which provides in relevant part:

> any carrier or carriers as defined in this chapter and labor organization or labor organizations duly designated and authorized to represent employees in accordance

with the requirements of this

> chapter shall be permitted -- . . . .
> (b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly-required as a condition or acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

Plaintiff claims a violation occurred when defendant EAL failed to withhold certain sums of money from his salary in order to pay the Air Lines Pilots Association (ALPA) in satisfaction of a Letter of Agreement regarding contract

Maintenance Fees and Check-Off entered into between defendant EAL and ALPA. (First Amended Complaint at 2-6). Plaintiff claims defendant EAL's actions ultimately caused his termination.

Stemming from these same facts, plaintiff also seeks redress from defendant EAL pursuant to Florida Statutes Par. 448.045 making it unlawful for two or more persons to agree, conspire, combine or confederate together to cause the discharge of any person in any firm or corporation (First Amended Complaint at 9). In the final count of his Complaint, plaintiff seeks redress from defendant United States Aviation Underwriters Incorporated for intentional tortious interference with the employment relationship between plaintiff and defendant EAL (First Amended Complaint at 11).

Plaintiff asserts jurisdiction as to the first count pursuant to 28 U.S.C. Par. 1331 as well as 28 U.S.C. Par. 1337. As to the second and third counts, plaintiff relies on pendant and pendant party jurisdiction respectively.

Appendix 4

Defendant's Motion to Dismiss

Defendant contends the conduct complained of by plaintiff constitutes a "minor grievance" under 45 U.S.C. Sub.Par.151, 184 which establish arbitration boards as the exclusive forum for resolution of such disputes, thus effectively precluding federal courts from obtaining subject matter jurisdiction (Defendants Motion at 2). Defendant contends that if no subject matter jurisdiction exists as to plaintiff's first count, then the second and third counts must also fail as they rely on the first to supply the basis for federal jurisdiction.

In the alternative, defendant suggests that "in the unlikely event that the Court does find subject matter jurisdiction for Count I, the court should decline to exercise its power to assert pendant-party jurisdiction over (defendant United States Aviation Underwriters Incorporated) in Counts II and III of Plaintiff's First Amended Complaint" as state court provides an adequate forum for resolution of those claims (Defendant's Motion at 3).

Appendix 4

Analysis

Is it "Major" or "Minor"

"Major" disputes

> [relate] to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

Elgin, Joliet, and Eastern U. Co. v. Burley, 325 U.S. 711, 723 (1945).

On the other hands, "Minor" disputes contemplate

> the existence of a collective bargaining agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one, The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case.

Appendix 4

Plaintiff alleges defendant (EAL) "violated 45 U.S.C. Par. 152 Eleventh (b), by denying [plaintiff] a fair opportunity to effect the deduction . . ." (First Amended Complaint at 6, para. 37) representing his share of the costs "of negotiating and administering a collective agreement and of adjustment and settlement of disputes" (Id. at 3, para. 14). Plaintiff contends his complaint states neither a "major" nor a "minor" dispute but rather states a claim arising "out of the interpretation and construction . . ." of 45 U.S.C. Par. 152, Eleventh (b). (Supplement to Response at 2).

In essence, therefore, plaintiff contends defendant EAL's refusal to deduct monies pursuant to the check-off agreement as requested by plaintiff constitutes a violation of the above-cited statute. We do not agree.

In the first place, the express language of the statute regarding withholding fees from employee's earnings is permissive, not mandatory. The section provides that: "notwithstanding any further provision of this chapter . . . any carrier . . . as defined in this chapter and a labor organization . . . duly designated in accordance with the

requirements of this chapter shall be permitted . . . . " 45 U.S.C. Par. 152, Eleventh (b) (emphasis added). Plaintiff has not alleged any mandatory duty exists on defendant EAL's part to withhold the funds - either from the statute itself or from the Letter of Agreement regarding Contract Maintenance Fees and Check-Off entered into between defendant EAL and defendant ALPA.

Second, cases involving interpretation of 45 U.S.C. Par. 152, Eleventh (b) typically involve interpretation of union security agreements, Klemens v. Air Line Pilots Ass'n, Intern., 736 F.2d 491, 496 (9th Cir. 1984), or the method of revocation available to employees under that section. Felter v. Southern Pacific Co., 359 U.S. 326, 333 (1959).

Finally, a careful reading of the facts alleged in plaintiff's First Amended Complaint indicate attempts to artfully plead a wrongful discharge in the clothing of an alleged statutory violation.

Appendix 4

Conclusion

We are cognizant of the presumptions enjoyed by a plaintiff when the court considers a motion to dismiss. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) and Conley v. Gibson, 335 U.S. 41, 45-6 (1957). Even after affording plaintiff all necessary presumptions, however, we cannot escape the conclusion that the First Amended Complaint fails to state a claim pursuant to 45 U.S.C. Par. 152, Eleventh (b).

Regarding plaintiff's remaining two claims, we need not look far to resolve whether they state a claim independent of the first claim. As noted by plaintiff Counts II and III both rely upon pendant party jurisdiction derived from Count I. If, as we have concluded, this Court has not been presented with a viable claim in Count I, then Counts II and III also must fail.

For the above-noted reasons and after careful review of the entire record in this matter, it is

RECOMMENDED that plaintiff's First Amended Complaint be DISMISSED for failure to state a claim upon

which relief can be granted.

The parties may serve and file written objections to this Report with The Honorable Eugene P. Spellman, United States District Judge, within ten (10) days of receipt. See 28 U.S.C. Par. 636(b)(1)(C); United States v. Warren, 687 F.2d 347 (11th Cir. 1982), cert. denied, 460 U.S. 1087 (1983); and Hardin v. Wainwright, 678 F.2d 589 (5th Cir. unit B 1982). See also Thomas v. Arn, 474 U.S. 140 (1985).

Dated in Miami, Florida, on this 15th day of February, 1989.

/s/_____

Samuel J. Smargon

United States Magistrate

cc: Counsel of record

Appendix 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-1114-CIV-SPELLMAN

FILED APRIL 4, 1989

DANIEL G. GELLERT,
Plaintiff,

vs

EASTERN AIR LINES, INC.,
and UNITED STATES AVIATION
UNDERWRITERS INCORPORATED,
Defendants.

_____/s/

ORDER OF ADOPTING AND AFFIRMING MAGISTRATE'S RECOMMENDATION AND ORDER OF DISMISSAL

THIS CAUSE comes before the Court upon the Magistrate's report and recommendation regarding the Defendant's Motion to Dismiss. After a *de novo* review of the recommendation, the objections thereto, and of the record. it is hereby

ORDERED AND ADJUDGED that this Court ADOPTS AND AFFIRMS said recommendation and that Motion is

GRANTED. This cause is DISMISSED, for failure to state a claim upon which relief can be granted.

It is further ORDERED that the Plaintiff's Motion to Set Aside Order Setting Case for Trial is MOOT.

DONE AND ORDERED in Chambers at Miami, Florida this 27th day of March, 1989

_____/s/
UNITED STATES DISTRICT JUDGE

cc: all counsel of record

Appendix 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DANIEL G. GELLERT	
Plaintiff,	CASE NO.90-1113 CIV-MOORE
v.	
EASTERN AIRLINES FIXED BENEFIT RETIREMENT INCOME PLAN FOR PILOTS, an employee benefit pension plan, and EASTERN AIR LINES, INC. solely as Administrator of such defendant plan, et al.,	
Defendants	

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT DATED APRIL 7, 1993

Defendants Eastern Airlines Fixed Benefit Retirement Income Plan for Pilots, Eastern Air Lines, Inc. ("Eastern"), William R. Tegtman, Noel Honohan, and Alan C. Gibson (hereinafter collectively referred to as "Defendants"), hereby respectfully request that the Court strike Plaintiff's motion for summary judgement against

Defendants, dated April 7, 1993. In support thereof, Defendants state the following:

1. On January 10, 1992, this Court ordered the entry of a Final Judgement in favor of Defendants Jack N. Mogus and Charles Copeland, following the Court's September 6, 1991 Order dismissing, with prejudice, both Mogus and Copeland from this action.[1]

2. On or about February 19, 1992, Defendants William R. Tegtman, Noel Honohan and Alan C. Gibson filed a motion for their dismissal as defendants in this action, with prejudice, for the same reason that the Court dismissed Mogus and Copeland as defendants, i.e. that as individual members of the Eastern Airlines Pilot Retirement Board a/k./a. Pension Dispute Board, they were entitled to arbitral immunity. That motion is still pending before the Court.

3. On February 13, 1992, the Court, sua sponte, ordered that Plaintiff's First Amended Complaint (filed

---

1 Defendants Mogus and Copeland are represented by their own counsel in this action sand have filed their own motion to strike Plaintiff's motion for summary judgement

January 25, 1992) be stricken, because it named defendants and asserted counts that the Court had previously dismissed with prejudice.

4. On or about March 3, 1992 Plaintiff filed a so-called Third Amended Complaint, (and a so-called Fourth Amended Complaint) which again included counts and named defendants which the Court previously dismissed with prejudice. In fact, Plaintiff's third and fourth amended complaints included the same counts contained in Plaintiff's January 25, 1992 amended complaint and named the same defendants which were previously dismissed with prejudice pursuant to the Court's Memorandum Opinion of September 6, 1992.

5. Accordingly, on March 10, 1992, Defendants filed a Motion to Strike Plaintiff's Third and Fourth Amended Complaints or in the alternative, for an Extension of Time to Respond to Plaintiff's Third or Fourth Amended Complaint. That motion is still pending before the Court.

Appendix 6

6. On or about June 25, 1992, Defendants filed a Notice of Pendency of the motions referred to above, notifying the Court that more than ninety (90) days had elapsed since these motions had been filed and that no hearing had been set on these motions.

7. Plaintiff's summary judgement motion seeks summary judgement against the Defendants on various counts of the third amended complaint which appear to basically allege that Plaintiff was wrongfully terminated in 1986 for failing to pay union dues and was wrongfully denied disability benefits in 1987.

8. Plaintiff's claim that he was wrongfully denied disability benefits in 1987 was the precise claim which this Court held was barred by the applicable statute of limitations in its September 6, 1992 Memorandum Opinion. Furthermore, Defendants note that Plaintiff unsuccessfully contested the legality of his 1986 discharge before this Court in Case No. 88-1114 (Spellman, J.), and Plaintiff's appeal to the Eleventh Circuit from that determination has been stayed (Eleventh Circuit

Case No. 89-5378), as a result of Eastern's chapter 11 bankruptcy filing.

9. In view of the above, Defendants respectfully submit that the Court should strike Plaintiff's motion for summary judgement or at the very least, rule upon Defendant's pending motions prior to requiring Defendants to respond to Plaintiff's frivolous motion for summary judgement.

WHEREFORE, Defendants respectfully request that the Court enter an Order striking Plaintiff's Motion for Summary Judgement, or alternatively, staying that motion until the Court rules on Defendant's Motion to Strike Plaintiff's Third and Fourth Amended Complaint or in the Alternative for Enlargement of Time Within Which to Respond to Plaintiff's Third or Fourth Amended Complaint and until the Court rules on the motion of Defendants Tegtman, Honohan and Gibson for their dismissal as defendants in this action.

Appendix 6

Respectfully submitted,

/s/_____

Maurice J. Baumgarten
Florida Bar No. 525324
Eastern Air Lines, Inc.
Building 16, Room 440, MIALG
Miami International Airport
Miami, Florida 33148
(305) 873-7857

Attorney for Defendants

Appendix 6

CERTIFICATE OF SERVICE

I, Maurice J. Baumgarten, attorney for the Defendants, hereby certify that a true and correct copy of the hereto annexed Defendant's Motion to Strike was served by U.S. mail this 19th day of April, 1993 to:

Daniel G. Gellert,
P. O. Box 320370
Cocoa Beach, Florida 32931

Robert T. Kofman, Esquire
Stearns, Weaver, et. al.
150 West Flagler Street
Miami, Florida 33130

Karen L. Morris, Esquire
Office of the General Counsel
Pension Benefit Guaranty Corporation
2020 K Street, N.W.
Washington, DC 30006-1860

Mark Hicks, Esquire
Hicks, Anderson & Blum, P.A.
New World Tower - Suite 2402
100 North Biscayne Blvd.
Miami, Florida 33132

/s/_____
Maurice J. Baumgarten

Appendix 7

Document No. 102

LETTER OF AGREEMENT
regarding
CONTRACT MAINTENANCE FEES
and
CHECK-OFF
between
EASTERN AIR LINES, INC.
and
THE AIR LINE PILOTS
in the service of
EASTERN AIR LINES, INC.
as represented by
THE AIR LINE PILOTS ASSOCIATION
INTERNATIONAL

THIS LETTER OF AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between EASTERN AIR LINES, INC. (hereinafter known as "Eastern" or "the Company"), and the Air Line Pilots in the service of EASTERN AIR LINES, INC., as represented by the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (hereinafter known as the "Association").

WITNESSETH:

It is mutually agreed:

I. CONTRACT MAINTENANCE FEE (CMF)

A. Contract Maintenance Fee Liability

1. Each pilot on the Eastern Pilots' Seniority list shall be required, as a condition of employment, beginning sixty (60) days after the effective date of this Letter of Agreement or sixty (60) days after the completion of his probationary period, whichever shall last occur, (1) to be or become a member of the Association, or (2) to pay

to the Association a monthly contract maintenance fee (CMF) for the administration of the Agreement and the representation of the pilot.

2. Such monthly CMF shall be equal to the Association's regular monthly dues which would be required to be paid by such pilot if a member; provided that neither membership nor the payment of a CMF shall be required in respect to any such pilot (a) to whom membership is not available upon the same terms and conditions generally applicable to any other member, or (b) as to whom membership was denied or terminated for any reason other than the termination for any reason other than the failure to tender periodic dues, initiation fees and assessments uniformly required by the Association or the EAL-MEC as a condition of acquiring or retaining membership. To the extent required by law, a rebate/reduction in his dues or CMF shall be made to any pilot properly requesting such rebate/reduction from the Treasurer of the Association. The Association shall treat members and non-members alike in calculating the amounts due, in establishing the due date of payments and in determining whether a pilot's account is delinquent

3. The provision of Section I of this Letter of Agreement shall not apply to those pilots who are occupying a management position with a title of director or above.

B. Delinquency

1. If any pilot who is required under this Letter of Agreement to make payment of a CMF becomes delinquent in the making of such payments, the Association shall notify such pilot by certified mail, return receipt requested, copy to the Vice President Flight Operations and System Chief Pilot of Eastern, or his successor or designee.

2. The letter of notification shall advise the pilot that he is delinquent in the payment of such CMF and the total amount of money due and the period for which he is delinquent and that he is subject to discharge as an employee of the Company. Such letter shall also notify the pilot that he must remit the required payment within a period of fifteen (15) days or be discharged.

3. The notice of delinquency required under this paragraph shall be deemed to be received by the pilot, whether or not it is personally received by him, when mailed by the Treasurer of the Association by certified mail, return receipt requested, postage prepaid to the pilot's last known address, or to any other address which has been designated by the pilot. It shall be the duty of every pilot covered by this Agreement to notify the Association's Membership Services Department of every change in his home address, or of an address where the notice required by this paragraph can be sent and received by the pilot if the pilot's home address is at any time unacceptable for this purpose.

C. Certification of Delinquency

If, upon the expiration of the fifteen (15) day period provided in Paragraph B above, the pilot still remains delinquent, the Association shall certify in writing to the Vice President Flight Operations and System Chief Pilot of Eastern, or his successor or designee, copy to the pilot; that the pilot has failed to remit payment within the grace period allowed and is therefore to be discharged. The Vice President Flight Operations and System Chief Pilot, or his successor or designee, shall thereupon take the proper steps to discharge such pilot from service of the Company as soon as possible, and in any event within thirty (30) days after receipt of the notice provided for herein, shall advise the pilot of his termination.

D. Appeal Procedure

1. A protest by a pilot who is to be discharged as a result of an interpretation or application of the provisions of this Section of this Letter of Agreement shall be subject to the following procedures:

2. A pilot who believes that the said provisions have not been properly interpreted or applied, as they pertain to him, may submit his request for review in writing fifteen (15) days after receipt of the notification from the Vice President Flight Operations and System Chief Pilot, or his successor or designee as provided in Paragraph C. The request must be sent by certified mail, return receipt requested, to the Vice President Flight Operations and System Chief Pilot, or his successor or designee, who will review the protest and render a decision in writing, not later than fifteen (15) days following receipt of the protest.

3. The Vice President Flight Operations and System Chief Pilot, or his successor or designee shall, forward his decision to the pilot, with a copy to the Treasurer of the Association, both by certified mail, return receipt requested. Said decision shall be final and binding on all interested parties, unless appealed as hereinafter provided. If the decision is not satisfactory to either the pilot or the Association, then either may appeal within fifteen (15) days from the receipt of the decision, by filing a notice of appeal. Such notice shall be sent to the other party and to the Vice President Flight Operations and System Chief Pilot, or his successor or designee, by certified mail, return receipt requested. Appeal shall be directly to a Neutral Referee who shall be agreed upon by the pilot and the Association within fifteen (15) days after receipt of the notice of appeal. In the event the parties fail to agree upon a Neutral Referee within the specified period, either the pilot or the Association may request the National Mediation Board to

name such Neutral Referee. The hearing before the Neutral Referee shall be held as soon as possible, and the decision of the Neutral Referee shall be requested within thirty (30) days after the hearing. The decision of the Neutral Referee shall be final and binding on all parties to the dispute. The fees and charges of such appeal and Neutral Referee shall be borne by the party making the appeal.

E. Status Pending Appeal

1. During the period a protest is being handled, as herein provided, and until a final decision is rendered by the Vice President Flight Operations and System Chief Pilot, or his successor or designee, or the Neutral Referee, the pilot shall not be discharged from the Company nor lose any seniority rights because of non-compliance with the terms and provisions herein. However, a pilot unavailable for normal flight duty by reason of non-compliance with the terms and provisions of this Letter of Agreement or by reason of exercising the above appeal rights shall have all monthly guarantees prorated in accordance with Section 11-C of the Agreement for each day of unavailability.

F. Discharge

A pilot discharged by the Company under the provisions herein shall be deemed to have been "discharged for cause."

II. DUES AND CONTRACT MAINTENANCE FEE CHECK-OFF

A. During the life of this Letter of Agreement, the Company will deduct from the monthly pay of each pilot which is subject to the withholding of federal taxes and remit to the Air Line Pilots Association membership dues uniformly levied (not including initiation fee, fines, penalties, or assessments) in accordance with Constitution and

Appendix 7

By-Laws of the Association as prescribed by the Railway Labor Act, as amended, or the contract maintenance fee as defined in Section I (A) above, provided such pilot voluntarily executes the following agreed-upon form which will be prepared and furnished by the Association and known as a "Check-Off Form".

ASSIGNMENT AND AUTHORIZATION FOR
VOLUNTARY CHECK-OFF OF
ASSOCIATION DUES
OR CONTRACT MAINTENANCE FEES

To Eastern Air Lines, Inc.

I, _____, hereby authorize and direct Eastern Air Lines, Inc. to deduct from my earnings 1.35% of my gross earnings as standard monthly membership Association dues (or such standard monthly membership dues as may hereafter be established by the Association), or an amount equivalent to such dues which shall be deemed a contract maintenance fee. Such amount so deducted is hereby assigned to the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL subject to all the terms and conditions of the Railway Labor Act, as amended, and the provisions of the Check-Off Agreement. This assignment and authorization may be revoked by me in writing at any time. A copy of any such revocation will be sent by me to the Chairman of the Master Executive Council.

Date_____
Signature of Employee_____
Address_____
Employee Number _____
Domicile_____

B. All Check-Off Forms will be submitted through

the President of the Association, who will forward the original signed copy addressed to the Director-Payroll Department of the Accounting Department, Eastern Air Lines, Inc., Miami, Florida, or to such other official as Eastern may from time to time designate. A properly executed Check-Off Form or notice of revocation received before the 15th of any month, will become effective the first of the month following such receipt by the Payroll Department of the Accounting Department, Eastern Air Lines., Miami, Florida. Illegible or improperly executed forms will be returned to the Chairman of the Master Executive Council of the Association.

C. Any notice of revocation, as set forth in the Check-Off Form, must be in writing, signed by the pilot and delivered by certified mail, addressed to the Director-Payroll Department of the Accounting Department, Eastern Air Lines, Inc., Miami, Florida, or to such other official as Eastern may from time to time designate, with a copy delivered in the same manner by the pilot to the Chairman of the Master Executive Council. Check-Off forms and notices of revocation received by Eastern will be stamp-dated on the date received by Eastern and will constitute notice to Eastern on the date received, not when mailed.

D. Deduction of membership dues or contract maintenance fees shall be made from each paycheck issued provided there is a sufficient balance due the pilot at that time after all other deductions authorized by the pilot or required by law have been satisfied. Within a reasonable time after the end of each month, Eastern will remit to the Association a check in payment of all dues and contract maintenance fees collected during that month pursuant to outstanding and unrevoked Check-Off Forms. These remittances will be subject to normal accounting practice with respect to adjustments necessary because of the methods involved in the deduction procedure.

E. A pilot who has executed a Check-Off Form and (1) who has been transferred or promoted to a position not covered by the Agreement, (2) who resigns from the Company, (3) who is furloughed or laid off or is (4) otherwise terminated from Eastern shall be deemed to have automatically revoked his assignment as of the date of such action, and if he (1) returns to a position covered by the Agreement (2) is rehired, or (3) recalled, further deductions of Association dues or contract maintenance fees will be made only upon execution and receipt of another Check-Off Form.

F. Collection of any back dues or contract maintenance fees owed at the time of starting deductions for any pilot, collection of dues or contract maintenance fees missed because the pilot's earnings were not sufficient to cover the payment of dues or contract maintenance fees in the specified pay period and collection of dues or contract maintenance fees missed because of accidental errors in the accounting procedure will be the responsibility of the Association and will not be the subject of payroll deductions, and Eastern shall not be responsible in any way because of missed collections. It will be the Association's responsibility to verify apparent errors with the individual Association member before contacting Eastern's Director-Payroll.

G. Changes in standard monthly membership dues or contract maintenance fees will be given effect only upon notice by the President of the Association, delivered in writing, to Eastern, by certified mail, and will become effective as provided in Section II (B) for check-off authorizations and revocations.

H. In cases where a deduction is made which duplicates a payment already made to the Association by a pilot and where a deduction is not in conformity with the provisions of the Association Constitution and By-Laws,

refunds to the pilot will be made by the Association.

III. GENERAL

A. The Association agrees to indemnify and hold Eastern harmless for any and all claims, awards, or judgement including court costs, back pay and attorney fees, which may result from action by any pilot or pilots or any other person by virtue of the wrongful application or misrepresentation of any of the terms of this letter of Agreement.

B. This Letter of Agreement supersedes and replaces Document No. 40, signed January 29, 1971.

C. This Letter of Agreement shall become effective as of the first of the month following signature by all parties and shall be subject to changes in the same manner as specified in the Basic Pilots' Employment Agreement between the parties hereto.

IN WITNESS WHEREOF, the parties have signed this Letter of Agreement this 28th day of February, 1985.

FOR EASTERN AIRLINES WITNESS:

/s/_____
Frank Borman
Chairman, President and
Chief Executive Officer

/s/_____
R. J. Shipner
Vice President Flight Operations
and System Chief Pilot

Appendix 7

FOR THE AIR LINE PILOTS
IN THE SERVICE OF
EASTERN AIR LINES, INC. WITNESS

/s/_____
Henry A. Duffy, President
Air Line Pilots Association,
international

/s/_____
L. D. Schulte, Chairman
Master Executive Council

Appendix 8

ASSIGNMENT AND AUTHORIZATION FOR VOLUNTARY CHECK-OFF OF ASSOCIATION DUES

TO: EASTERN AIR LINES, INC.

I, D. G. Gellert hereby authorize and direct Eastern Air Lines, Inc. to deduct from my earnings 1.35% of my gross earnings or standard monthly membership Association dues (or such standard monthly membership dues as may hereafter be established by the Association). Such amount so deducted is hereby assigned to the AIR LINES PILOTS ASSOCIATION, INTERNATIONAL subject to all the terms and conditions of the Railway Labor Act, as amended, and the provisions of the Dues Check-Off Agreement. This assignment and authorization may be revoked by me in writing after the expiration of one (1) year from the date hereof, or upon the termination date of the Pilots' Agreement in effect at the time this is signed whichever occurs sooner. A copy of any such revocation will be sent by me to the Chairman of the Master Executive Council.

Date: 12-1-71
Signature of Employee /s/ Daniel G. Gellert
Address: 610 Poinsetta Street - Satellite Beach, FL 32937
Man Number: 32839
Base Station: JFK - NY

Appendix 9

ASSIGNMENT AND AUTHORIZATION FOR VOLUNTARY CHECK-OFF OF ASSOCIATION DUES ~~OR CONTRACT MAINTENANCE FEES~~

To: Eastern Air Lines, Inc.

I, /s/ D. G. Gellert, hereby authorize and direct Eastern Air Lines, Inc. to deduct from my earnings 1.35% of my gross earnings as standard monthly membership association dues (or such standard monthly membership dues as may hereafter be established by the Association), ~~or an amount equivalent to such dues which shall be deemed a contract maintenance fee~~. Such amount so deducted is hereby assigned to the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL subject to all the terms and conditions of the Railway Labor Act, as amended, and the provisions of the Check-Off Agreement. This assignment and authorization may be revoked by me in writing at any time. A copy of any such revocation will be sent by me to the Chairman of the Master Executive Council.

DUES ONLY!
Date: June 1, 1985
Signature of Employee: /s/ D. G. Gellert
Address: P. O. Box 187, Cocoa Beach, FL 32931
Employee Number: 32938
Domicile: MIA

Attn: John Dodge

This authorization is for ALPA dues ONLY. NO Contract maintenance fee.

I hereby demand ALPA Membership and I do have dues deduction authorization on file (Init.)

Appendix 10

ASSIGNMENT AND AUTHORIZATION FOR VOLUNTARY CHECK-OFF OF ASSOCIATION DUES OR CONTRACT MAINTENANCE FEES

TO: EASTERN AIR LINES, INC.

I, /s/ D. G. Gellert, hereby authorize and direct Eastern Air Lines, Inc. to deduct from my earnings 2.35% of my gross earnings as standard monthly membership Association dues (or such standard monthly membership dues as may hereafter be established by the Association), or an amount equivalent to such dues which shall be deemed a contract maintenance fee. Such amount so deducted is hereby assigned to the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, subject to all the terms and conditions of the Railway labor Act, as amended and the provisions of the Check-Off Agreement. This assignment and authorization may be revoked by me in writing at any time. A copy of any such revocation will be sent by me to the Chairman of the Master Executive Council.

Signature of Employee /s/ D. G. Gellert
Address: P. O. Box 187 - Cocoa Beach, FL 32931
Employee Number: 32938
Domicile: MIA
Date: Sept. 17, 1985

Appendix 11

January 21, 1986

Captain D. G. Gellert
P. O. Box 370
Cocoa Beach, Florida 32931

Dear Captain Gellert:

Captain Jim Holder, Atlanta LEC Chairman, asked me to write you concerning your position on rejoining ALPA. Jim said you were based in Miami. I have forwarded your name to Ron Rindfleisch. He will send you the required paper work.

Sincerely,

AIR LINE PILOTS ASSOCIATION

/s/_____
Steve Holbert, Chairman
Membership Committee
Eastern Council 07

SH/nb
cc: Capt. Jim Holder
Capt. P. W. Page

AIR LINES PILOTS ASSOCIATION ATLANTA FIELD OFFICE
1007 Virginia Avenue, Suite B-200, Atlanta, GA 30354
(404) 763-3800

Appendix 12

January 23, 1986
P. O. Box 370, Cocoa Beach, FL 32931

Mr. John J. Magee
Treasurer, ALPA
P. O. Box 1169
Herndon, VA 22070

Dear Mr. Magee:

In this separate letter, since this does not concern every one copied in letter P 564 923 335, may I suggest that I pay the cost of my share in the contract between EAL and ALPA, until such a time as my ALPA membership is resolved in my favor.

In a January 9, 1986 letter from you, I am told that now I must pay another percent added to my contract obligation. You told me that CMF (Contract Maintenance Fee) now was unilaterally increased by one percent of my gross earnings.

I have made formal application for ALPA membership, and if I am not allowed membership, or until such time, I do not believe that I should pay monies to the general ALPA fund, those funds beyond your cost of negotiating and enforcing the contract and its immediate administration. Please send to me a bill, which represents those costs only, removing political, organizational, and all other cost that ALPA members are required to pay.

You can not have it both ways; you can not deny to me membership, and then demand payments in CMF which would be the same as if I was a member. At the present time, I do not agree with ALPA policy, and as such I should not be forced to pay these large sums of monies without my right to vote, dissent or otherwise express my views.

Your position is that I must pay these funds or be discharged, that I do not have any rights under the law, but that I must obey all your orders and directives or you can take my ability to earn a livelihood in my profession, is absurd. Please be guided accordingly.

Sincerely,

/s/_____
D. G. Gellert

Attached to P 564 923 335

Appendix 13

AIR LINE PILOTS ASSOCIATION
1625 Massachusetts Avenue, N.W.
Washington D.C. 20036
(202) 797-4000

April 14, 1986

Captain R. J. Shipner
Vice President Flight Operations
and System Chief Pilot
Eastern Airlines
Miami International Airport
Miami, Florida 33148

Dear Captain Shipner:

I am requesting that you rescind the discharge of D.G. Gellert, #32839, which has not yet become effective. He has today tendered a check in the amount of $1,248.36 to the Association in satisfaction of his contract maintenance obligation through April 1986. Thank you for your cooperation.

Sincerely,

/s/_____
John J. Magee, Treasurer
Air Line Pilots Assn.

cc: Mr. L. D. Schulte
Captain Paul Page
Mr. Martin Soll, Esq.
Mr. D. G. Gellert

Appendix 14

May 21, 1986

Mr. D. G. Gellert
P. O. Box 370
Cocoa Beach, Florida 32931

Dear Mr. Gellert:

The Appeal Procedure contained in Document 102 between Eastern Air Lines and the Air Line Pilots Association, International (ALPA), (copy enclosed) requires that the pilot and the Association agree upon a Neutral Referee. ·I have enclosed a list of Neutrals that are acceptable to the Association. In the event that we fail to agree upon a Neutral Referee, the pilot or the Association may petition the national Mediation Board to name a Neutral Referee. Under Document 102 the fees and charges of the appeal and neutral Referee are your responsibility since you filed an appeal.

Please advise the Association whether any of the proposed Neutrals are acceptable to you.

Sincerely,

/s/_____
Felice Busto, Attorney
Legal Department

FB: jd
Certified Mail

Airline Pilots Association
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(703) 689-2270

Appendix 15

Airline Pilots Association
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(703) 689-2270

July 23, 1986

Mr. D. G. Gellert
P. O. Box 370
Cocoa Beach, Florida 32931

Dear Mr. Gellert:

I am writing to advise you that the Association has requested Lawrence E. Seibel to arbitrate your discharge from Eastern Airlines under Document 102. This was done pursuant to your telephone request on July 18, 1986, during which you selected Mr. Seibel to hear your case.

The Association, through John Loomos, will represent you at the arbitration. Under Document 102 the costs of the arbitration are your responsibility since you filed an appeal in this matter.

Please feel free to contact me should you have any questions.

Sincerely,

Felice Busto, Attorney
Legal Department

Appendix 15

FB: bjb

Certified

cc: M.E. Burke
C. Copeland
A.C. Gibson
G.T. Jehn
J. Loomos
J.J. Magee
L.D. Schulte
C. Sheppard
M.A. Soll

Appendix 16

LAURENCE E. SIEBEL
Impartial Labor Arbitrator
5523 Uppingham Street
Chevy Chase, Maryland 20815
(301) 656-9500

October 17, 1986

Felice Busto, Esq., Attorney
Legal Department
Airline Pilots Association International
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

John Loomos, Esq.
Airline Pilots Association, EAL-MEC Office
201 Madeira Avenue
Coral Gables, Florida 33134

Re: Captain D. G. Gellert
Eastern Airlines, Inc.
Contract Maintenance Fee
CMF Case No. 2

Dear Ms. Busto and Mr. Loomis:

There are enclosed herewith two executed Decisions in the above styled matter.

The fee for my services is $2,000.00, which includes the hearing, travel, and study, a total of four (4) days. The expenses were $250.00; which included travel, etc. The total of the fee and expenses, therefore is $2,250.00 which, I assume, is payable one-half or $1,125.00 by each of the Parties or is payable by the Airline Pilots Association. I leave that to you and to Mr. Soll for resolution.

Sincerely yours,
/s/_____
Laurence E. Seibel

Copy to:
Martin A. Soll, Esq.
Manager/Flight Agreements and Contract Administration
Eastern Airlines/Flight Operations
Miami International Airport
Miami, Florida 33148

Appendix 17

Airline Pilots Association
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(703) 689-2270

April 6, 1989

Mr. Daniel G. Gellert
Post Office Box 320370
Cocoa Beach, Florida 32931

Dear Mr. Gellert:

If Eastern is, as your March 27 letter suggests, threatening you with loss of retirement benefits unless you work during the current IAM strike and ALPA sympathy strike, this would, of course, be unlawful. If necessary, ALPA can recommend competent counsel to assist you should such threats materialize, and you may feel free, despite your non-membership status, to call the ALPA Legal Department for such a recommendation if needed.

If you believe that ALPA has kept any sums of money which are properly yours, please contact our Membership Services Department for an accounting.

Sincerely,

/s/_____
Henry A. Duffy, President

HAD: jd

cc: J. J. Davis

Appendix 18

PENSION BENEFIT GUARANTY CORPORATION
2020 K. Street N.W. - Washington, DC 20006-1860

March 25, 1991

Memorandum

To: Anna L. Gilreath
Eastern Plans Project Coordinator

Through: David C. Lindeman, Director
Corporate Policy and Research Department

From: Ellan H. Spring
Program Policy Division, CPRD

Re: Pilots' Disability Benefit

You have asked whether the disability benefit in the Eastern Air Lines Fixed Benefit Retirement Income Plan for Pilots is a guaranteeable benefit.

The pilots' plan provides that a participant will be eligible to receive a disability benefit if he becomes disabled prior to attaining normal retirement age. permanent disability is defined in section 3.6(b) of the plan as follows:

> Permanent disability means the complete inability of such Participant as a result of physical or mental reasons to continue in employment with Eastern as a pilot . . .

Disability resulting from intentionally self-inflicted injuries, suicide attempts, substances abuse or acts of war while a pilot is on military leave are excluded.

The PBGC's regulation or guaranteed benefits provides that an annuity payable under the terms of a plan for a total and permanent disability that started before termination is a pension benefit and therefore guaranteeable unless the PBGC determines that the standards for determining total and permanent disability under a plan are unreasonable or were modified in anticipation of termination. If the PBGC makes either determination, it will guarantee a disability benefit only if the participant meets the standards set by the Social Security Administration for determining total disability. 29 C.F.R. Par. 2613.7 (a) and (b).

The question raised with regard to the pilots plan is whether the plan's disability standard is a reasonable standard of total and permanent disability.

At issue is whether an "occupational" disability standard, which only requires the participant be unable to perform the duties of his or her particular job (and, sometimes, "similar" jobs), is "reasonable", or whether the plan disability standard must be of the more restrictive type used by Social Security (i.e., one that defines disability as inability to engage in any substantial gainful activity) to be considered "reasonable" and thus guaranteeable.

The preambles to the proposed and final guaranteed benefits regulations shed no light on this questions. However, we believe that, if we had intended to guarantee only disability under the Social Security type standard, the regulation would have so provided. Further, occupational-disability standards are not uncommon; indeed, the Civil Service Retirement Systems uses such a standard. A plan that utilizes an occupational-disability standard would be funding to reflect the higher incidence of disability retirements under such a standard.

Appendix 18

Conclusion

We conclude that an occupational disability standard is perfectly acceptable as a standard for total and permanent disability. If the standard contained in a plan is reasonable similar to either the Social Security disability standard or is a typical occupational-disability standard, as the pilots' standard is, disability benefits for disabilities occurring before termination should be guaranteed. PBGC's reservation of authority under Par. 2613.7(b) is intended to allow us to not guarantee disability benefits where the plan standards are unreasonable, where plan disability standards are not reasonably administered, or where the standards were modified in anticipation of plan termination.

We have discussed this issue informally with Renae Hubbard of OGC, but have not sought that Office's formal legal opinion.

cc: Renae Hubbard

Appendix 19

May 7, 1992

To File
Larry L. Norfolk
Member, Appeals Board

Appeal 91-410, Daniel Gellert
Eastern Air Lines

The following is a record of my telephone conversation on May 7, 1992, with Bill Roberts, an attorney with the Airline Pilots Association ("ALPA"). He is very familiar with the agreement, and specifically with Eastern Air Lines, (EAL), because he worked on EAL matters for quite a few years at ALPA.

He stated that ALPA had worked with PBGC on a number of EAL disability cases in which EAL refused to pay out sick leave because workers were on strike, and thus would not let them go out on disability because they had not exhausted sick leave as required by the pension plan. he said these pilots were in limbo when the plan terminated, i.e. they were in a "Catch 22" situation. A number of grievances and lawsuits were filed against EAL because they were not reducing the sick leave of pilots and denying their disability applications. ALPA worked with the PBGC to resolve the outstanding disability cases after the plan terminated.

However, this would not apply to some one who terminated prior to the strike period. Specifically, someone who terminated employment in 1986 would not have been a part of the discussions with PBGC concerning exhaustion of sick leave.

We discussed the meaning of the provisions of Section 38 of the EAL/ALPA agreement dated 1981. He agreed

that Section 38, D. 1. meant that I could divide the number of days of sick leave by 15 and determine how many months it would take to exhaust sick leave. We discussed E.2. as it applied to pilots who were drawing workmen's compensation. He said he had not had any issues come up with regard to this section, but would agree with my assessment that it would seem that such a pilot would be charged consecutive calendar days for sick leave instead of the maximum of 15 days per month as described above.

For future reference, his telephone number at ALPA is 703-689-2270, extension 4099.

Appendix 20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
-V-
EASTERN AIRLINES, INC. Deft #1

JUDGMENT INCLUDING SENTENCE
UNDER THE SENTENCING REFORM ACT

CASE NUMBER: CR 90-629

(Name of Defendant)

JANE PARVER
425 Park Avenue
New York, N.Y. 10022

Defendant's Attorney and Address

THE DEFENDANT:
☒ pleaded guilty to count(s) #1, #7, #16, #17, #22, #25 and #36.
☐ was found guilty on count(s)_____
after a plea of not guilty.

Accordingly, the defendant is ADJUDGED guilty of such count(s), which involve th following offenses:

TITLE & SECTION	NATURE & OFFENSE	COUNT NUMBER(S)
Title 18, U.S.C. Sections 371 and 3551 et seq.) Title 18, U.S.C. Sections 1001, 3551 et seq. and 2).	Conspiracy to defraud the FAA and falsified documents.	1, 7, 16, 17, 22, 25 and 36.

The defendant is sentenced as provided in pages 1 through 2 of this Judgment The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)_____ and is discharged as to such count(s).
☒ ~~XXXXXXX~~) Open counts (is)(are) dismissed on the motion of t United States.
☒ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☐ It is ordered that the defendant shall pay to the United States a specia assessment of $_____ which shall be due immediately.

It is further ORDERED that the defendant shall notify the United States Attor for this district within 30 days of any change of residence or mailing addres until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:

EASTERN AIR LINES, INC.
Defendant's mailing address:

Miami International Airport

Miami, Florida 33148
Defendant's residence address:

March 20, 1991
Date of Imposition of Sentence

L. Leo Glasser
Signature of Judicial Officer

I. LEO GLASSER U.S.D.J.
Name & Title of Judicial Officer

March 20, 1991
DATE:

A TRUE COPY ATTEST
DATED Mar. 20 1991
ROBERT C. HEINEMANN
CLERK
BY: Denise Dekillot
DEPUTY CLERK